

McCray, Pamela

From: Hendershot, Michael
Sent: Tuesday, December 17, 2013 4:38 PM
To: Irauch@mankogold.com
Cc: Guy, Lydia; McCray, Pamela
Subject: Response to Freedom of Information Act Request No. R3-2014-001107
Attachments: manko gold foia.pdf

Hello, Lynn,

Attached are all of the documents in our possession responsive to the above-referenced Freedom of Information Act request.

Please feel free to call me at (215) 814-2641 if you have any questions about the foregoing.

Best regards,

Mike Hendershot

October 10, 2008

Mr. Dan Jordanger, Esq.
Mr. Jeffrey Martin, Esq.
Hunton and Williams, LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074

Re: **Metal Bank Cottman Avenue Site Remedial Action**
Response to 9/17/08 USEPA Letter Demanding Stipulated Penalties

Gentlemen:

Malcolm Pirnie is in receipt of a copy of the subject letter regarding EPA's demand for stipulated penalties against the Utility Group for the Metal Bank Superfund Site.

We have prepared this factual response to the EPA allegations.

A – Repeated Releases of Oily Waste Materials into the Delaware River.

Pursuant to the requirements of (the consent order and) TtEC's contract specifications, control measures were undertaken prior to initiation of work within the work zone, which were approved by EPA and the PRP group. Recognizing that the remedial action undertaken within the river bank area is very difficult even under the best of conditions, the remedial contractor has exhibited a willingness to affirmatively address environmental control issues as soon as possible.

TtEC and its subcontractor proactively deployed a turbidity curtain prior to initiation of work activities on July 21, 2008. Additionally, TtEC and its subcontractor store sorbent booms and sorbent pads on-Site so that they can immediately respond and control migration of sheens.

On September 8, 2008, based on the experiences gained to date, to enhance the environmental controls in this difficult situation, Malcolm Pirnie, on behalf of the PRPs and TtEC, submitted a proposal to EPA describing additional measures to be employed at the Site to contain oil sheens.

The proposal included the installation of an additional turbidity curtain and an additional oil containment boom set 10 feet beyond the curtain in the river. The proposal was acceptable to EPA, based on an email from Sharon Fang of EPA dated September 9, 2008. These measures are now in place. A discussion of the specific events follows below.

July 21, to July 23, 2008 Events

As recognized by EPA in its September 17, 2008 letter, TtEC took immediate and appropriate actions to control sheens that were observed within the work zone (defined as the area enclosed by a turbidity curtain installed prior to the initiation of work activities) in the Delaware River on July 21, 2008. TtEC's turbidity curtain contained the sheens inside the work zone, and immediately TtEC installed oil sorbents when the sheen anomaly was observed within the turbidity curtain. The oil absorbent booms were installed within the turbidity curtain (the upstream side) along approximately 75% of the work zone where the sheen had accumulated inside the turbidity curtain due to the flow of the incoming tide. To the best of our knowledge, at no time was a sheen observed outside of the turbidity curtain on July 21, 2008 by the contractors at the site.

In response to the prior day's events, TtEC installed additional containment measures on July 22, 2008 in order to increase the controls in this work environment. These measures included installation of a second turbidity curtain and additional absorbent materials along the perimeter of the work zone. It was observed that TtEC was also prepared to construct an earthen berm to contain sheens within the excavation area on July 22, 2008, but was instructed not to do so by the EPA's on-site person so that he/she could observe the activities. The EPA's on-site person requested that the installation of the earthen berm be delayed until July 23 to accommodate EPA's schedule.

September 2, 2008 Event

On September 5, 2008 Chief Richard Braucci of the USCG, Sharon Fang of EPA, and Steven Langseder and Joe Vitale of Malcolm Pirnie met on-site to discuss 1) the 3.2 mile oil sheen of September 2, 2008 and 2) additional countermeasures to contain oil sheens emanating from the Metal Bank site. At that meeting, Chief Braucci stated that the U.S. Coast Guard did not have sufficient evidence to connect the source of the September 2 oil sheen to the Metal Bank Site. The EPA and USCG shared photographs of the reported sheen with Malcolm Pirnie during the

September 5, 2008 meeting. One of the pictures displayed on Chief Braucci's laptop showed a sheen originating upstream of the Metal Bank site and on the New Jersey side of the Delaware River during an outgoing tide. Malcolm Pirnie has requested a copy of these pictures from both the EPA (Sharon Fang) and the USCG by way of a FOIA request, but to date these pictures have not been provided to Malcolm Pirnie or the PRP Group.

August 27, September 3, and September 4 Events

The subject 8/27/08, 9/3/08, and 9/4/08 instances where releases from the site were observed by parties on the site or brought to the attention of the on-site parties by the Army Corps of Engineers or the EPA oversight, and were then observed by Malcolm Pirnie personnel, were reported as specified in the April 2008, Final Remedial Action Workplan by TtEC. TtEC responded immediately pursuant to the EPA- approved RAWP.

During the ebb tides, twice daily, it has been observed that there are times when the turbidity curtain and containment booms lay on the exposed mud flats and stones along the bank. During those times, field conditions beyond the control of the remedial contractor enable migration of the water from inside the containment zone below the booms (i.e. surface runoff over the mud flats) and/or through channels in the stones. Any oil present in the water would also naturally seep past the controls; this occurs even when there are no active remedial actions being performed. These 3 subject releases were minor in nature, addressed appropriately and in all cases, quickly dissipated. Additionally, to the best of our knowledge no sheen was observed to be escaping the work zone on September 5, 2008 by Malcolm Pirnie or TtEC on-site personnel.

B – Failure to Implement Sediment and Erosion Control Measures.

Erosion and sediment control measures were installed around the Courtyard Area in accordance with the approved Remedial Action Work Plan prior to initiation of soil disturbance activities in this area. The soil removed from this area was stockpiled in the in the northeastern portion of the South Area on plastic sheeting and was covered with plastic sheeting. While the super silt fence was not complete along the western border of the South Area, it is our observation that the standard silt fence was installed around the entire perimeter of the South Area. In addition to the silt fence

surrounding the entire South Area, the existing vegetative cover present in this area of the Site substantially mitigated the risk of erosion of potentially contaminated materials from the Site, and met the intent of the approved remedial action. TtEC has since committed to ensure that all sediment and erosion control measures are in place and maintained as required by the RAWP.

C – Construction of Inadequate Decontamination Pad.

We agree that the decontamination pad was initially constructed of different dimensions than shown in the accepted remedial design. Decontamination pad dimensions are generally determined in the field based on site access conditions and the construction contractor's actual on-site equipment at the time of construction activities. The pad that was originally constructed was functional for the design purpose of appropriately decontaminating vehicles exposed to PCB containing materials, had these work practices been needed. In response to the EPA request, the pad was reconstructed to the dimensions shown on the drawings on August 16th, prior to its need for material load-out, which was initiated on August 18. Additionally, note that the 19'x19' dimensions stated by the EPA are taken from the top of the curb, not the overall construction dimensions of the pad, which, in fact, was covered by gravel at the time of the measurement indicated in the September 17th EPA letter. The actual overall measurements of the originally constructed pad were 27' x 19'.

Sealing of the pad was not initially done by TtEC as per the recommendation of the blacktop subcontractor. Asphalt industry standards of care generally avoid the sealing of newly paved surfaces for four to six months after construction to allow for curing.

The leak referenced in the EPA letter was the result of a test where TtEC plugged the drain and filled the pad with clean water to determine if the pad would hold water beyond its design criteria to evaluate a more effective tire cleaning alternative to standard pressure washing work practices per the approved RAWP. It is the observation of the on-site contractors that the decontamination pad has functioned for its intended purpose in accordance with the contract documents, and contained all wash waters.



Mr. Dan Jordanger, Esq.
Mr. Jeffrey Martin, Esq.
Hunton and Williams, LLP
October 10, 2008
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D. Failure to Erect a Site Sign.

As stated in the EPA letter, the sign had not been installed by the September 2, 2008 date referenced. However, the EPA was informed prior to that date that the signs had been ordered from the manufacturer and had not yet been delivered.

If you have any questions regarding the content of this letter, please feel free to call Joe Vitale at 781-213-4930.

Very truly yours,

MALCOLM PIRNIE, INC.

A handwritten signature in black ink that reads "Peter G. Witko". The signature is stylized, with the first name and last name clearly legible.

Peter G. Witko, P.E.
Vice President

CC: Joe Vitale



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

October 21, 2008

Via Telecopy and First-Class Mail

Jeffrey N. Martin, Esq.
Hunton & Williams
1900 K Street, NW
Washington, DC 20006-1109

Re: Metal Bank Site, Philadelphia, Pennsylvania

Dear Mr. Martin:

EPA Region III has considered the arguments presented by the Utility Group's representatives concerning the Region's imposition of stipulated penalties against the Utility Group during our meeting on October 17, 2008. As previously stated, EPA believes that it exercised restraint and discretion in assessing the stipulated penalties. EPA did not learn anything during the informal negotiation meeting which it believes warrants any reduction in the stipulated penalties. Accordingly, EPA considers the informal negotiation period to be concluded, and the original stipulated penalties remain pending.

The Utility Group may pay the stipulated penalties totaling \$27,500.00 in accordance with the terms of Paragraph 77 of the Consent Decree. If the Utility Group elects to contest the stipulated penalties in a formal dispute resolution proceeding, then the Group must submit a written Statement of Position to EPA within ten (10) days of the date of this letter pursuant to Paragraph 67 of the Consent Decree.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Monsees".

John J. Monsees
Sr. Assistant Regional Counsel (3RC42)

cc: Kathryn A. Hodgkiss (3HS00)
James N. Webb (3HS20)
Peter J. Ludzia (3HS21)
Sharon Fang (3HS21)
John Sither, Esq. (DOJ)



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FILE NO: 41234.000003

October 2, 2008

VIA FAX AND OVERNIGHT MAIL

Mr. James N. Webb
Associate Director
Office of Superfund Site Remediation (3HS20)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Metal Bank Cottman Avenue Site

Dear Mr. Webb:

On behalf of the members of the Cottman Avenue PRP Group (the "Utility Group" or "Group") and its contractors Tetra Tech EC, Inc. and Malcolm Pirnie, Inc., we are writing in response to your letter dated September 17, 2008, which Jeff Martin received on September 22, 2008. That letter identifies certain alleged violations of the Utility Consent Decree and demands stipulated penalties for those alleged violations.

The Utility Group and its contractors do not agree with all of the factual assertions set forth in your letter and are interested in discussing with EPA the alleged Consent Decree violations and EPA's demand for penalties. Accordingly, in an effort to resolve their disagreement with certain assertions in your letter as well as with the imposition of certain stipulated penalties, the Group and its contractors invoke the dispute resolution provisions of Section XIX of the Utility Consent Decree. Our hope is that, through informal discussions with EPA, we can quickly resolve our disagreements without resorting to additional dispute resolution measures.

A representative of the Group's supervising contractor, Malcolm Pirnie, will contact the EPA Remedial Project Manager, Sharon Fang, to discuss the schedule for initiating discussions. In the meantime, please contact either of us if you wish to discuss this matter.

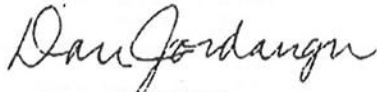
HUNTON &
WILLIAMS

Mr. James N. Webb

October 2, 2008

Page 2

Sincerely,



Dan J. Jofdanger

Jeffrey N. Martin

DJJ/mh

cc: (via e-mail)

Sharon Fang, P.E.

John J. Monsees, Esquire

Cottman Avenue PRP Group

Steering Committee

Technical Committee

Mr. Neil Geever

Joseph P. Vitale, P.E.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

September 17, 2008

Via Federal Express

Jeffrey N. Martin, Esq
Hunton & Williams
1900 K Street, NW
Washington, DC 20006-1109

Re: Metal Bank Site, 7301 Milnor Street, Philadelphia, PA

Dear Mr. Martin:

As you are aware, there have been a number of problems with the Utility Group's implementation of the remedial action at the Metal Bank Site at 7301 Milnor Street, Philadelphia, Pennsylvania ("Site") as required by the Consent Decree entered by Judge Giles on March 7, 2006.¹ While EPA understands that issues may arise during the construction phase of any remedial project, several of the problems which have occurred at the Metal Bank Site have been significant, both in terms of the Utility Group's unauthorized deviations from the approved work specifications, as well as unacceptable increases in the potential for harm to the environment.

EPA has advised the Utility Group's representatives repeatedly of the need to address these critical problems, via regular communications from the EPA's Remedial Project Manager, a conference call among the parties' representatives, technical consultants and counsel on July 22, 2008, and a face-to-face meeting among the parties' representatives at the Site on August 21, 2008. Despite these communications and repeated pledges by the Utility Group to address the problems, many of the most serious problems identified by EPA were not responded by the Utility Group's contractors in an expeditious manner. Indeed, some critical problems, such as the uncontrolled releases of oil and sheens into the Delaware River, have been continuing for weeks and remain unresolved. The Utility Group's failure to promptly respond to EPA's concerns necessitates that EPA take further action.

¹The Utility Group consists of: Consolidated Edison Company of New York, Public Service Electric and Gas Company, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Long Island Lighting Company d/b/a LIPA, Metropolitan Edison Company, Orange and Rockland Utilities, PECO Energy Company, Potomac Electric Power Company, PP&L Electric Utilities Corporation, and Virginia Electric and Power Company.



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A. Repeated Releases of Oily Waste Materials into the Delaware River

As you will recall, after the 2002 liability trial, Judge Giles held that the presence of contaminated oil in the subsurface of the Site presents potential threats to the environment. United States v. Union Corp., et al., 259 F. Supp. 2d 356, 377-380 (E.D.Pa. 2003). The trial record was replete with evidence of significant concentrations of contaminated oils in the subsurface of the embankment of the Site. 259 F. Supp. 2d at 373-374. The Court specifically found that contaminants migrating from the Site, including oily wastes and sheens, were having adverse effects on aquatic organisms and plant life in the vicinity of the Site. 259 F. Supp. 2d at 400. Although the Consent Decree remedy is intended to greatly reduce or eliminate the migration of oily wastes from the Site, the manner in which the Utility Group has implemented the remedial work to date – by failing to control repeated releases of oily sheens to the Delaware River – has been inconsistent with that remedial goal.

Beginning on July 21, 2008, an oil sheen was observed emanating from the excavated areas of the riverside embankment of the Site. EPA notes that the Utility Group's contractors relied on a turbidity curtain to control released oils from the embankment. However, only after oil sheens were released to the Delaware River did the Utility Group's contractors attempt to place an absorbent boom along the curtain to capture floating oil that was not contained by the turbidity curtain. On July 21, 2008, the Utility Group's contractors placed a boom along only approximately 75% of the turbidity curtain. Oily sheens were observed escaping the incomplete containment boom. Although additional booms and another curtain were installed on July 22, the release of sheens to the River continued through July 23, 2008.

On August 27, 2008, the Utility Group's contractors reported a small oil sheen escaping from one end of the turbidity curtain.

In the first week of September, there were several uncontrolled releases of oily sheens from the Site into the Delaware River. On September 2, 2008, the U.S. Coast Guard observed oil sheens migrating into the River from the turbidity curtain surrounding the Work Area at the Site. Pictures taken by the Coast Guard investigators show that the absorbent booms previously deployed along the turbidity curtain had been removed. The Army Corps of Engineers reported that oil sheens were escaping the turbidity curtain on September 3. The Utility Group's contractors did not deploy any absorbent booms in response to this event. On September 4, 2008, oil sheens again escaped the turbidity curtain into the Delaware River. In response, the Utility Group's contractors reinstalled an absorbent boom along the turbidity curtain. On September 5, 2008, the EPA representative reported that oil sheens were once again escaping the turbidity curtain. The on-site Supervising Contractor for the Utility Group was notified. The Utility Group's contractors promised to submit a proposal for new oil containment measures.

Any quantity of oil sufficient to create a sheen is deemed to be a "harmful quantity" under the Clean Water Act as defined at 40 C.F.R. § 110. Each discharge of oil and oily material from the Site into the water of the Delaware River constitutes a release of waste material under the

Consent Decree. The Consent Decree expressly obligates the Work Group to immediately take all appropriate action to prevent, abate, or minimize a release of waste material, or threat thereof. Consent Decree, ¶ 52. Similarly, the work specifications at Specification 1564, Section 3.06, require the Work Group to contain and eliminate discharges from the Site.

After the initial report of oil sheens in the Delaware River on July 21, 2008, the Work Group should have taken immediate action to abate the existing release and to implement all appropriate controls to prevent future releases. Given the record established at trial, it is inconceivable that any contractor excavating in the riverside embankment of the Site would fail to anticipate encountering significant deposits of oil and oily wastes in the subsurface and to make adequate preparations for controlling the migration of such materials. An absorbent boom was not fully deployed along the perimeter of the Work Area (as defined by the turbidity curtain) until July 22. The initial boom eventually was supplemented by a second turbidity curtain and subsequently a second boom and third turbidity curtain. The Utility Group constructed a berm to contain the embankment excavation on July 23.

The event of July 21 succinctly demonstrated that a turbidity curtain alone is inadequate to contain oil and sheens released during construction activities in the riverside portion of the Work Area. Inexplicably, the absorbent booms and additional turbidity curtains deployed in July were subsequently removed sometime in August, which allowed additional oil sheens to escape from the Work Area on August 27, and throughout the first week of September.

Paragraph 72 of the Consent Decree provides EPA with the authority to impose stipulated penalties for a variety of specific instances of noncompliance with the requirements of the Consent Decree, including the failure to effectively prevent and respond to the release, or the threat of release, of waste materials from the Site. EPA is imposing a stipulated penalty against the Utility Group of \$16,000.00 for the eight days of oil sheen releases to the Delaware River from the Site between July 21 and September 5, 2008.

B. Failure to Implement Sediment and Erosion Control Measures

The Utility Group's contractors began earth-disturbing construction activities at the Site on July 11, 2008, prior to completing the installation of the required super-silt fencing around the Work Area. The installation of the super-silt fencing was completed on July 25, 2008, and only after EPA ordered the Work Group's contractors to cease all other work activities at the Site.

The Work Group has committed to performing the remedial action at the Site in accordance with the terms of the Consent Decree, the Revised Final Design, the Remedial Action Work Plan ("RAWP"), and the associated work specifications. Consent Decree, ¶ 6a. The completion of appropriate sediment and erosion control measures was a basic prerequisite to any earth-moving activities. See RAWP, Section 5.4.1.5, paragraph 2 and Plan Drawings P. C-19. In the absence of completed erosion control measures, such as the super-silt fence, the risk of erosion

of potentially contaminated materials from the Site was dramatically increased, which is absolutely contrary to the purpose of the remedial action.

Paragraph 73a of the Consent Decree provides EPA with the authority to impose stipulated penalties upon the Utility Group for general noncompliance with the requirements of the Consent Decree. The Utility Group's failure to implement erosion control measures in a timely manner was inconsistent with the approved RAWP and associated specifications, and therefore violated Paragraph 6a of the Consent Decree. Although earth-moving activities at the Site began on July 11, 2008, the super-silt fence was not completed until July 25, 2008. EPA is imposing a stipulated penalty against the Utility Group in the amount of \$7,000.00 for the 14 days between July 11 and July 25, 2008, when there was incomplete erosion control fencing at the Site.

C. Construction of Inadequate Decontamination Pad

On August 12, 2008, EPA's oversight contractor notified the Utility Group's contractor that the decontamination pad installed at the Site was constructed in a manner inconsistent with the specifications in the approved RAWP at p. 5-2 and Figure 5. The actual dimensions of the decontamination pad as built by the Utility Group's contractors were 19' x 19' as opposed to the specified dimensions of 16' x 30' with a 16' run of gravel in the front and back. EPA also observed that water was leaking from the decontamination pad because the pad was not sealed in accordance with Section 5.4.1.7. of the approved RAWP, Vol I., and Specification 03300, 3.09.A.2. The Utility Group's contractor had attempted to mitigate this deficiency by creating a soil berm to prevent the water from leaking. After EPA notified the Utility Group's contractor about these deficiencies, the contractor reconstructed the decontamination pad to conform to the required specifications on August 16, 2008.²

Paragraph 73a of the Consent Decree provides EPA with the authority to impose stipulated penalties upon the Utility Group for general noncompliance with the requirements of the Consent Decree. The Utility Group's failure to construct the decontamination pad in conformance to the specifications in the approved RAWP violated Paragraph 6a of the Consent Decree. EPA is imposing a stipulated penalty against the Utility Group in the amount of \$2,000.00 for the four days (at \$500.00 per day) of use of an inadequate and noncompliant decontamination pad.

D. Failure to Erect a Site Sign

A Site Sign is required by Section 5.4.1.4 of the approved RAWP. The Work Group has committed to performing the remedial action in accordance with the RAWP. Consent Decree,

²Additionally, EPA has advised the Utility Group's contractors that the stockpile pad remains unsealed, in contravention of the work specifications. Rather than sealing the stockpile pad, the Utility Group's contractors have assumed the obligation to sample the pad area upon completion of the remedial action to verify the absence of any contamination. The presence of contaminants in this area may require additional removal work.

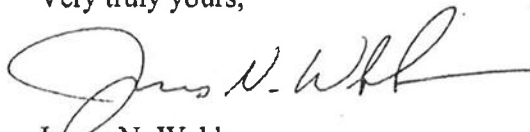
¶ 6a. Paragraph 73a of the Consent Decree provides EPA with the authority to impose stipulated penalties upon the Utility Group for general noncompliance with the requirements of the Consent Decree. The Utility Group's failure to erect a sign for the Site as required by Section 5.4.1.4 of the approved RAWP violated Paragraph 6a of the Consent Decree.

The lack of a Site Sign is not a mere technicality, because EPA views the installation of a Site Sign as a necessary public information tool. Indeed, on the evening of September 2, a representative of U.S. Coast Guard who attempted to visit the Site in response to the discovery of oil sheens in the adjacent River could not immediately identify the Site as a remedial site under the oversight of the EPA because of the lack of a Site Sign. Although the lack of a Site Sign was discussed at the meeting of the parties at the Site on August 21, 2008, as of September 9, 2008, the Utility Group still had not installed a Site Sign. While EPA has the authority under the Consent Decree to impose a larger stipulated penalty for this violation, EPA is exercising its discretion to impose a stipulated penalty against the Utility Group in the amount of \$2,500.00 for this failure to comply with the approved RAWP.

In conclusion, pursuant to Paragraph 76 of the Consent Decree, this letter constitutes EPA's demand for a total of \$27,500.00 in stipulated penalties against the Utility Group for the violations of the Consent Decree noted above. Pursuant to Paragraph 77 of the Consent Decree, the Utility Group shall pay the stipulated penalties to the United States within thirty (30) days of your receipt of this letter, unless the Group invokes the Dispute Resolution procedures under Section XIX of the Consent Decree. Please arrange for the Group's payment to be made in compliance with the terms of Paragraph 77 of the Consent Decree. Additionally, please note that stipulated penalties are excluded from reimbursement from the bankruptcy settlement funds maintained by the EPA, pursuant to Paragraph 121 of the Consent Decree.

EPA regrets that it has had to impose stipulated penalties upon the Utility Group, but given the repeated and continuing failures over the last seven weeks of the Utility Group's implementation of the remedial action at the Site, EPA believes this action is necessary to get the Utility Group focused on complying with both the letter and spirit of the Consent Decree and incorporated work specifications. If you have any questions, please contact John J. Monsees, the EPA attorney assigned to this site, at (215) 814-2632.

Very truly yours,



James N. Webb
Associate Director,
Office of Superfund Site Remediation (3HS20)

cc: Kathryn Hodgkiss (3HS00)
Peter J. Ludzia (3HS21)

Sharon Fang (3HS21)
John J. Monsees, Esq. (3RC42)
John Sither, Esq. (DOJ)

